



Reprinted
January 31, 2006

HOUSE BILL No. 1397

DIGEST OF HB 1397 (Updated January 30, 2006 10:40 pm - DI 73)

Citations Affected: IC 4-2; IC 4-13; noncode.

Synopsis: State ethics standards. Changes the definition of "business relationship" in the executive branch ethics statute to include the relationship a lobbyist has with an executive branch agency. Gives the state ethics commission (commission) certain jurisdiction over lobbyists. Provides that the inspector general may seek an advisory opinion from the commission. Changes the evidentiary standard applicable to commission findings from "competent and substantial" to a preponderance of the evidence. Shifts certain responsibilities from the commission to the inspector general. Authorizes a member of the commission to participate in commission meetings from a remote location under certain circumstances. Requires certain persons who have final purchasing authority for an agency to file an annual financial disclosure statement. Authorizes the commission to require revocation of licenses, permits, or registrations issued by an agency for violations of the ethics statutes or rules. Requires registration of executive branch lobbyists with the department of administration. Authorizes the department to adopt rules to establish registration fees and to impose civil penalties and revoke registrations if an executive branch lobbyist violates the registration requirements. Imposes initial registration fees. Makes other technical changes. Repeals the current statute authorizing registration of executive branch lobbyists.

Effective: July 1, 2006.

Whetstone, Van Haaften, Kuzman

January 12, 2006, read first time and referred to Committee on Government and Regulatory Reform.
January 26, 2006, amended, reported — Do Pass.
January 30, 2006, read second time, amended, ordered engrossed.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1397

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-2-6-1, AS AMENDED BY P.L.222-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2006]: Sec. 1. **(a)** As used in this chapter, and unless the
4 context clearly denotes otherwise:

5 (1) "Agency" means an authority, a board, a branch, a bureau, a
6 commission, a committee, a council, a department, a division, an
7 office, a service, or other instrumentality of the executive,
8 including the administrative, department of state government. The
9 term includes a body corporate and politic set up as an
10 instrumentality of the state and a private, nonprofit, government
11 related corporation. The term does not include any of the
12 following:

13 (A) The judicial department of state government.

14 (B) The legislative department of state government.

15 (C) A state educational institution (as defined in
16 IC 20-12-0.5-1).

17 (D) A political subdivision.

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(2) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.

(3) "Assist" means to:

(A) help;

(B) aid;

(C) advise; or

(D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

(4) "Business relationship" ~~means~~ **includes the following:**

(A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

~~(A)~~ **(i)** a pecuniary interest in a contract or purchase with the agency; or

~~(B)~~ **(ii)** a license or permit requiring the exercise of judgment or discretion by the agency.

(B) The relationship a lobbyist has with an agency.

(C) The relationship an unregistered lobbyist has with an agency.

(5) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(6) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(7) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(8) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.

(9) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings

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in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(10) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(11) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(12) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(13) "Property" has the meaning set forth in IC 35-41-1-23.

(14) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

(15) "Special state appointee" means a person who is:

(A) not a state officer or employee; and

(B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

(16) "State officer" means any of the following:

(A) The governor.

(B) The lieutenant governor.

(C) The secretary of state.

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(D) The auditor of state.

(E) The treasurer of state.

(F) The attorney general.

(G) The superintendent of public instruction.

(17) The masculine gender includes the masculine and feminine.

(18) The singular form of any noun includes the plural wherever appropriate.

(b) The definitions in IC 4-2-7 apply throughout this chapter.

SECTION 2. IC 4-2-6-2, AS AMENDED BY P.L.222-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) There is created a state ethics commission.

(b) The commission is composed of five (5) members appointed by the governor.

(c) No more than three (3) commission members shall be of the same political party. A person who:

(1) holds an elected or appointed office of the state;

(2) is employed by the state; or

(3) is registered as a lobbyist under ~~IC 2-7-2-1~~; **IC 4-2-7**;

may not be a member of the commission. The governor shall designate one (1) member of the commission as the chairperson. Each appointment to the commission is for a period of four (4) years. A vacancy shall be filled by the governor for the unexpired term.

(d) The inspector general shall provide rooms and staff assistance for the commission.

SECTION 3. IC 4-2-6-4, AS AMENDED BY P.L.222-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) The commission may do any of the following:

(1) Upon a vote of four (4) members, refer any matter within the inspector general's authority to the inspector general for investigation.

(2) Receive and hear any complaint filed with the commission by the inspector general that alleges a violation of:

(A) this chapter;

(B) a rule adopted under this chapter;

(C) **IC 4-2-7**; or

~~any other statute or rule establishing standards of official conduct of state officers, employees, an executive branch lobbyist (as defined in IC 4-2-7-1); or special state appointees.~~

(D) **a rule adopted under IC 4-2-7**;

(E) **IC 4-2-8**; or

(F) **a rule adopted under IC 4-2-8.**

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(3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.

(4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, and special state appointees, ~~including whether additional specific state officers or employees should be required to file a financial disclosure statement under section 8 of this chapter; and persons who have business relationships with agencies.~~

(5) Adopt rules under IC 4-22-2 to implement this chapter.

~~(6) Prescribe and provide forms for statements required to be filed under this chapter.~~

~~(7)~~ (6) Accept and file information:

(A) voluntarily supplied; and

(B) that exceeds the requirements of this chapter.

~~(8) Inspect financial disclosure forms.~~

~~(9) Notify persons who fail to file forms required under this chapter.~~

~~(10) Develop a filing, a coding, and an indexing system required by this chapter and IC 35-44-1-3(f).~~

~~(11)~~ (7) Conduct research.

~~(12) Prepare interpretive and educational materials and programs.~~

(b) The commission shall do the following:

(1) Act as an advisory body by issuing advisory opinions to interpret this chapter, **IC 4-2-7**, or the commission's rules or any other statute or rule establishing standards of official conduct, **adopted under this chapter or IC 4-2-7**, upon:

(A) request of:

(i) a state officer or a former state officer;

(ii) an employee or a former employee;

(iii) a person who has or had a business relationship with an agency; or

(iv) a special state appointee or former special state appointee; or

(v) the inspector general; or

(B) motion of the commission.

(2) Conduct its proceedings in the following manner:

(A) When a complaint is filed with the commission, the commission may:

(i) reject, without further proceedings, a complaint that the

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commission considers frivolous or inconsequential;
(ii) reject, without further proceedings, a complaint that the
commission is satisfied has been dealt with appropriately by
an agency;

(iii) upon the vote of four (4) members, determine that the
complaint does not allege facts sufficient to constitute a
violation of this chapter or the code of ethics and dismiss the
complaint; or

(iv) forward a copy of the complaint to the attorney general,
the prosecuting attorney of the county in which the alleged
violation occurred, the state board of accounts, a state
officer, the appointing authority, or other appropriate person
for action, and stay the commission's proceedings pending
the other action.

(B) If a complaint is not disposed of under clause (A), a copy
of the complaint shall be sent to the person alleged to have
committed the violation.

(C) If the complaint is not disposed of under clause (A), the
commission may promptly refer the alleged violation for
additional investigation by the inspector general. If the
commission finds by a majority vote that probable cause exists
to support an alleged violation, it shall ~~convene~~ set a public
hearing on the matter. ~~within sixty (60) days after making the~~
~~determination.~~ The respondent shall be notified within fifteen
(15) days of the commission's determination. Except as
provided in this section, the commission's evidence relating to
an investigation is confidential.

(D) A complaint filed with the commission is open for public
inspection after the commission finds that probable cause
exists. However, a complaint filed by the inspector general that
contains confidential information under IC 4-2-7-8 may be
redacted to exclude the confidential information. Every
hearing and other proceeding in which evidence is received by
the commission is open to the public. Investigative reports by
the inspector general that are not filed with the commission
may be kept confidential.

(E) A:

(i) complaint that is filed with; or

(ii) proceeding that is held by;

the commission before the commission has found probable
cause is confidential unless the target of the investigation
elects to have information disclosed, or the commission elects

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to respond to public statements by the person who filed the complaint.

(F) The commission may acknowledge:

- (i) the existence and scope of an investigation before the finding of probable cause; or
- (ii) that the commission did not find probable cause to support an alleged violation.

(G) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(H) After the hearing, the commission shall state its findings of fact. If the commission, based on ~~competent and substantial~~ **a preponderance of the** evidence, finds by a majority vote that the respondent has violated this chapter, **IC 4-2-7, IC 4-2-8, or** a rule adopted under this chapter ~~or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees; IC 4-2-7, IC 4-2-8,~~ it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public.

(I) If the commission, based on ~~competent and substantial~~ **a preponderance of the** evidence, finds by a majority vote a violation of this chapter, **IC 4-2-7, IC 4-2-8, or** a rule adopted under this chapter ~~or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees; IC 4-2-7, IC 4-2-8,~~ the commission may also take any of the actions provided in section 12 of this chapter.

(J) The report required under clause (H) shall be presented to:

- (i) the respondent;
- (ii) the appointing authority or state officer of the employee, former employee, or special state appointee;
- (iii) the appointing authority or state officer of an agency or office that has a business relationship with the person sanctioned; and**
- ~~(iii)~~ **(iv)** the governor.

(K) The commission may also forward the report to any of the following:

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(i) The prosecuting attorney of each county in which the violation occurred.

(ii) The state board of accounts.

(iii) The state personnel director.

(iv) The attorney general.

(v) A state officer.

(vi) The appointing authority **of the state employee or agency that has a business relationship with the person sanctioned.**

(vii) Any other appropriate person.

(L) If the commission finds the respondent has not violated a code or statutory provision **or a rule adopted under this chapter, IC 4-2-7, IC 4-2-8**, it shall dismiss the charges.

(3) Review all conflict of interest disclosures received by the commission under IC 35-44-1-3, maintain an index of those disclosures, and issue advisory opinions and screening procedures as set forth in section 9 of this chapter.

(c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the commission concerning the case of a respondent that are not confidential under IC 5-14-3-4(b)(2)(C) shall be available for inspection and copying in accordance with IC 5-14-3.

SECTION 4. IC 4-2-6-4.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.3. (a) This section applies to a commission meeting at which at least three (3) members of the commission are physically present at the place where the meeting is being conducted.**

(b) A commission member may participate in a commission meeting by using a means of communication that permits:

(1) all other commission members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is being conducted;

to communicate simultaneously with each other during the meeting.

(c) A commission member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) A commission member who participates in a meeting under subsection (b) may act as a voting member on official action only if at least two (2) commission members physically present at the place where the meeting is being conducted concur in the official action.

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(e) The memoranda of the meeting prepared under IC 5-14-1.5-4 must also state the name of each member who:

- (1) was physically present at the place where the meeting was conducted;
- (2) participated in the meeting by using a means of communication described in subsection (b); or
- (3) was absent.

(f) A commission member who participates in a meeting under subsection (b) may not cast the deciding vote on any official action.

SECTION 5. IC 4-2-6-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4.5. Whenever an appointing authority or a state officer receives a report under section ~~4(b)(2)(G)~~ **4(b)(2)(H)** of this chapter, the appointing authority or state officer shall report to the commission the action taken in response to the report. The commission may require in the report that the appointing authority or the state officer submit the response required by this section in a reasonable, specified amount of time.

SECTION 6. IC 4-2-6-5.5, AS ADDED BY P.L.222-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

- (1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;

- (2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or
- (3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals **outside state government.**

(b) A written advisory opinion issued by the ~~inspector general~~ **commission** or the individual's ~~supervisor~~ **appointing authority or agency ethics officer** granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

SECTION 7. IC 4-2-6-6 IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2006]: Sec. 6. No state officer or employee, former state officer or employee, ~~or~~ special state appointee, **or former special state appointee** shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

SECTION 8. IC 4-2-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. A state officer, ~~or~~ employee, **or special state appointee** may not receive compensation:

(1) for the sale or lease of any property or service which substantially exceeds that which the state officer, ~~or~~ employee, **or special state appointee** would charge in the ordinary course of business; and

(2) from any person whom ~~he~~ **the state officer, employee, or special state appointee** knows or, in the exercise of reasonable care and diligence should know, has a business relationship with the agency in which the state officer, ~~or~~ employee, **or special state appointee** holds a position.

SECTION 9. IC 4-2-6-8, AS AMENDED BY P.L.222-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) The following persons shall file a written financial disclosure statement:

(1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.

(3) Any person who is the appointing authority of an agency.

(4) The director of each division of the department of administration.

(5) Any purchasing agent within the procurement division of the department of administration.

(6) Any agency employee, special state appointee, former agency employee, or former special state appointee with final purchasing authority.

~~(6) (7)~~ **(7) An employee required to do so by rule adopted by the commission: inspector general.**

(b) The statement shall be filed with the ~~commission~~ **inspector general** as follows:

(1) Not later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).

(2) If the individual has not previously filed under subdivision (1) during the present calendar year and is filing as a candidate for a

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1 state office listed in subsection (a)(1), before filing a declaration
 2 of candidacy under IC 3-8-2 or IC 3-8-4-11, petition of
 3 nomination under IC 3-8-6, or declaration of intent to be a
 4 write-in candidate under IC 3-8-2-2.5, or before a certificate of
 5 nomination is filed under IC 3-8-7-8, in the case of a candidate for
 6 one (1) of the state offices (unless the statement has already been
 7 filed when required under IC 3-8-4-11).

8 (3) Not later than sixty (60) days after employment or taking
 9 office, unless the previous employment or office required the
 10 filing of a statement under this section.

11 (4) Not later than thirty (30) days after leaving employment or
 12 office, unless the subsequent employment or office requires the
 13 filing of a statement under this section.

14 The statement must be made under affirmation.

15 (c) The statement shall set forth the following information for the
 16 preceding calendar year or, in the case of a state officer or employee
 17 who leaves office or employment, the period since a previous statement
 18 was filed:

19 (1) The name and address of any person known:

20 (A) to have a business relationship with the agency of the state
 21 officer or employee or the office sought by the candidate; and
 22 (B) from whom the state officer, candidate, or the employee,
 23 or that individual's spouse or unemancipated children received
 24 a gift or gifts having a total fair market value in excess of one
 25 hundred dollars (\$100).

26 (2) The location of all real property in which the state officer,
 27 candidate, or the employee or that individual's spouse or
 28 unemancipated children has an equitable or legal interest either
 29 amounting to five thousand dollars (\$5,000) or more or
 30 comprising ten percent (10%) of the state officer's, candidate's, or
 31 the employee's net worth or the net worth of that individual's
 32 spouse or unemancipated children. An individual's primary
 33 personal residence need not be listed, unless it also serves as
 34 income property.

35 (3) The names and the nature of the business of the employers of
 36 the state officer, candidate, or the employee and that individual's
 37 spouse.

38 (4) The following information about any sole proprietorship
 39 owned or professional practice operated by the state officer,
 40 candidate, or the employee or that individual's spouse:

41 (A) The name of the sole proprietorship or professional
 42 practice.

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- 1 (B) The nature of the business.
- 2 (C) Whether any clients are known to have had a business
- 3 relationship with the agency of the state officer or employee or
- 4 the office sought by the candidate.
- 5 (D) The name of any client or customer from whom the state
- 6 officer, candidate, employee, or that individual's spouse
- 7 received more than thirty-three percent (33%) of the state
- 8 officer's, candidate's, employee's, or that individual's spouse's
- 9 nonstate income in a year.
- 10 (5) The name of any partnership of which the state officer,
- 11 candidate, or the employee or that individual's spouse is a member
- 12 and the nature of the partnership's business.
- 13 (6) The name of any corporation (other than a church) of which
- 14 the state officer, candidate, or the employee or that individual's
- 15 spouse is an officer or a director and the nature of the
- 16 corporation's business.
- 17 (7) The name of any corporation in which the state officer,
- 18 candidate, or the employee or that individual's spouse or
- 19 unemancipated children own stock or stock options having a fair
- 20 market value in excess of ten thousand dollars (\$10,000).
- 21 However, if the stock is held in a blind trust, the name of the
- 22 administrator of the trust must be disclosed on the statement
- 23 instead of the name of the corporation. A time or demand deposit
- 24 in a financial institution or insurance policy need not be listed.
- 25 (8) The name and address of the most recent former employer.
- 26 (9) Additional information that the person making the disclosure
- 27 chooses to include.
- 28 Any such state officer, candidate, or employee may file an amended
- 29 statement upon discovery of additional information required to be
- 30 reported.
- 31 (d) A person who:
- 32 (1) fails to file a statement required by rule or this section in a
- 33 timely manner; or
- 34 (2) files a deficient statement;
- 35 upon a majority vote of the commission, is subject to a civil penalty at
- 36 a rate of not more than ten dollars (\$10) for each day the statement
- 37 remains delinquent or deficient. The maximum penalty under this
- 38 subsection is one thousand dollars (\$1,000).
- 39 (e) A person who intentionally or knowingly files a false statement
- 40 commits a Class A infraction.
- 41 SECTION 10. IC 4-2-6-11, AS AMENDED BY P.L.222-2005,
- 42 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2006]: Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state ~~employee~~ **appointee** after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist; ~~(as defined in IC 4-2-7-1);~~
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer,

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employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

(1) employment; or

(2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the ~~inspector general~~ **commission** certifying that:

(1) employment of;

(2) representation by; or

(3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

SECTION 11. IC 4-2-6-11.5, AS ADDED BY P.L.222-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11.5. (a) This section applies only to a person appointed after January 10, 2005.

(b) As used in this section, "advisory body" means a board, a commission, a committee, an authority, or a task force of the executive department that is authorized only to make nonbinding recommendations.

(c) Except as provided in subsection (d), a lobbyist (~~as defined in IC 4-2-7-1~~) may not serve as a member of a board, a commission, a committee, an authority, or a task force of the executive department.

(d) A lobbyist (~~as defined in IC 4-2-7-1~~) may serve as a member of an advisory body.

SECTION 12. IC 4-2-6-12, AS AMENDED BY P.L.222-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2006]: Sec. 12. If the commission finds a violation of this chapter, **IC 4-2-7, IC 4-2-8, or** a rule adopted under this chapter ~~or any other statute or rule governing official conduct of state officers, employees, or special state appointees, IC 4-2-7, or IC 4-2-8,~~ in a proceeding under section 4 of this chapter, the commission may take any of the following actions:

- (1) Impose a civil penalty upon a respondent not to exceed three (3) times the value of any benefit received from the violation.
- (2) Cancel a contract.
- (3) Bar a person from entering into a contract with ~~any~~ **an agency or a state officer** for a period specified by the commission.
- (4) Order restitution or disgorgement.
- (5) Reprimand, suspend, or terminate an employee or a special state appointee.
- (6) Reprimand or recommend the impeachment of a state officer.
- (7) Bar a person from future state employment as an employee or future appointment as a special state appointee.
- (8) Revoke a license or permit issued by an agency.**
- (9) Bar a person from obtaining a license or permit issued by an agency.**
- (10) Revoke the registration of a person registered as a lobbyist under IC 4-2-8.**
- (11) Bar a person from future lobbying activity with a state officer or agency.**

SECTION 13. IC 4-2-6-13, AS AMENDED BY P.L.222-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) Except as provided in subsection (b), a state officer, an employee, or a special state appointee shall not retaliate or threaten to retaliate against an employee, ~~or a former employee, a special state appointee, or a former special state appointee~~ because the employee, ~~or former employee, special state appointee, or former special state appointee~~ did any of the following:

- (1) Filed a complaint with the commission or the inspector general.
- (2) Provided information to the commission or the inspector general.
- (3) Testified at a commission proceeding.

(b) A state officer, an employee, or a special state appointee may take appropriate action against an employee who took any of the actions listed in subsection (a) if the employee **or special state appointee:**

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(1) did not act in good faith; or

(2) knowingly or recklessly provided false information or testimony to the commission.

(c) A person who violates this section is subject to action under section 12 of this chapter.

(d) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. In addition to any criminal penalty imposed under IC 35-50-3, a person who commits a misdemeanor under this section is subject to action under section 12 of this chapter.

SECTION 14. IC 4-2-7-1, AS ADDED BY P.L.222-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. The following definitions apply throughout this chapter:

(1) "Agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic established as an instrumentality of the state. The term does not include the following:

(A) The judicial department of state government.

(B) The legislative department of state government.

(C) A political subdivision (as defined in IC 4-2-6-1).

(2) "Business relationship" has the meaning set forth in IC 4-2-6-1.

(3) "Employee" means an individual who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(4) "Ethics commission" means the state ethics commission created by IC 4-2-6-2.

(5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

(6) "Person" has the meaning set forth in IC 4-2-6-1.

(7) "Special state appointee" has the meaning set forth in IC 4-2-6-1.

(8) "State officer" has the meaning set forth in IC 4-2-6-1.

SECTION 15. IC 4-2-7-3, AS ADDED BY P.L.222-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. The inspector general shall do the following:

(1) Initiate, supervise, and coordinate investigations.

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(2) Recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.

(3) Receive complaints alleging the following:

(A) A violation of the code of ethics.

(B) Bribery (IC 35-44-1-1).

(C) Official misconduct (IC 35-44-1-2).

(D) Conflict of interest (IC 35-44-1-3).

(E) Profiteering from public service (IC 35-44-1-7).

(F) A violation of the executive branch lobbying rules.

(G) A violation of a statute or rule relating to the purchase of goods or services by a current or former employee, state officer, special state appointee, lobbyist, or person who has a business relationship with an agency.

(4) If the inspector general has reasonable cause to believe that a crime has occurred or is occurring, report the suspected crime to:

(A) the governor; and

(B) appropriate state or federal law enforcement agencies and prosecuting authorities having jurisdiction over the matter.

(5) Adopt rules under IC 4-22-2 **to implement IC 4-2-6 and this chapter.**

(6) Adopt rules under IC 4-22-2 and section 5 of this chapter to implement a code of ethics.

~~(6)~~ (7) Ensure that every:

(A) employee;

(B) state officer;

(C) special state appointee; and

(D) person who has a business relationship with an agency;

is properly trained in the code of ethics.

~~(7)~~ (8) Provide advice to an agency on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency.

~~(8)~~ (9) Recommend legislation to the governor and general assembly to strengthen public integrity laws, **including the code of ethics for state officers, employees, special state appointees, and persons who have a business relationship with an agency, including whether additional specific state officers, employees, or special state appointees should be required to file a financial disclosure statement under IC 4-2-6-8.**

~~(9)~~ (10) Annually submit a report to the legislative council detailing the inspector general's activities. The report must be in an electronic format under IC 5-14-6.

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(11) Prescribe and provide forms for statements required to be filed under IC 4-2-6 or this chapter.

(12) Accept and file information:

(A) voluntarily supplied;

(B) that exceeds the requirements of this chapter.

(13) Inspect financial disclosure forms.

(14) Notify persons who fail to file forms required under IC 4-2-6 or this chapter.

(15) Develop a filing, a coding, and an indexing system required by IC 4-2-6 and IC 35-44-1-3.

(16) Prepare interpretive and educational materials and programs.

SECTION 16. IC 4-2-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 8. Registration and Reporting of Executive Branch Lobbyists

Sec. 1. The definitions in IC 4-2-6 and IC 4-2-7 apply throughout this chapter.

Sec. 2. As used in this chapter, "department" refers to the Indiana department of administration created by IC 4-13-1-2.

Sec. 3. (a) An executive branch lobbyist shall file the following with the department:

(1) A registration statement.

(2) An annual report as required by the department.

(b) Statements and reports filed under this section must be filed under oath.

Sec. 4. (a) The department shall charge each executive branch lobbyist an initial registration fee and an annual report filing fee set by rules adopted by the department under IC 4-22-2.

(b) In the rules adopted under this section, the department may provide for late fees for registration statements and annual reports that are filed late.

Sec. 5. (a) If the department finds that:

(1) a statement or report required to be filed under this chapter was materially incorrect;

(2) the person filing the statement or report was requested to file a corrected statement or report; and

(3) a corrected statement or report has not been filed;

the department may refer the matter to the inspector general or, after a hearing conducted under IC 4-21.5-3, take action under subsection (b).

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(b) If the department makes a finding under subsection (a), the department may do either or both of the following:

(1) Revoke the registration of the person who has failed to file a corrected statement or report.

(2) For a finding made after June 30, 2007, assess a civil penalty on the person who has failed to file a corrected statement or report of not more than five hundred dollars (\$500).

Sec. 6. (a) The department may impose either or both of the following sanctions if, after a hearing under IC 4-21.5-3, the department finds that a person has failed to file a registration statement or a report required by this chapter:

(1) Revoke the person's registration.

(2) For a finding made after June 30, 2007, assess a civil penalty on the person of not more than five hundred dollars (\$500).

(b) In imposing sanctions under this section, the department shall consider the following:

(1) Whether the failure to file the statement or report was willful or negligent.

(2) Any mitigating circumstances.

Sec. 7. In consultation with the inspector general and the commission, the department may adopt rules under IC 4-22-2 to accomplish the duties given to the department under this chapter.

SECTION 17. IC 4-13-1-4.2 IS REPEALED [EFFECTIVE JULY 1, 2006].

SECTION 18. [EFFECTIVE JULY 1, 2006] (a) The definitions in IC 4-2-6, IC 4-2-7, and IC 4-2-8 apply throughout this SECTION.

(b) The registration fee for an executive branch lobbyist under IC 4-2-8 is fifty dollars (\$50) until the department sets a different fee by rules adopted by the department under IC 4-22-2.

(c) The annual report filing fee for a lobbyist under IC 4-2-8 is fifty dollars (\$50) until the department sets a different fee by rules adopted by the department under IC 4-22-2.

(d) This SECTION expires on the earlier of the following:

(1) The date that rules to set registration fees for executive branch lobbyists adopted under IC 4-2-8-4, as added by this act, take effect.

(2) July 1, 2008.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1397, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 17, delete "an executive branch" and insert "a".

Page 2, between lines 18 and 19, begin a new line double block indented and insert:

"(C) The relationship an unregistered lobbyist has with an agency."

Page 4, line 17, delete ":".

Page 4, delete line 18.

Page 4, line 19, delete "(B)".

Page 4, line 19, strike "IC 2-7-2-1;" and insert "IC 4-2-7;"

Page 4, run in lines 17 through 19.

Page 4, line 41, delete "." and insert ";"

Page 4, between lines 41 and 42, begin a new line double block indented and insert:

"(E) IC 4-2-8; or

(F) a rule adopted under IC 4-2-8."

Page 7, line 17, after "IC 4-2-7," insert "IC 4-2-8,"

Page 7, line 18, after "chapter" strike "or".

Page 7, line 20, after "IC 4-2-7," insert "or IC 4-2-8,"

Page 7, line 26, after "IC 4-2-7," insert "IC 4-2-8,"

Page 7, line 27, after "chapter" strike "or".

Page 7, line 29, after "IC 4-2-7," insert "or IC 4-2-8,"

Page 8, line 11, delete "chapter or" and insert "chapter,"

Page 8, line 11, after "IC 4-2-7," insert "or IC 4-2-8,"

Page 10, delete lines 30 through 32.

Page 10, line 33, delete "(6) (7)" and insert "(6)".

Page 13, line 20, delete "a an executive branch" and insert "a".

Page 14, line 34, delete "a an executive branch" and insert "a".

Page 14, line 38, delete "A an executive branch" and insert "A".

Page 15, line 1, after "IC 4-2-7," insert "IC 4-2-8,"

Page 15, line 1, after "chapter" strike "or".

Page 15, line 3, after "IC 4-2-7," insert "or IC 4-2-8,"

Page 15, line 19, delete "an" and insert "a".

Page 15, line 20, delete "executive branch".

Page 16, line 29, delete "'Lobbyist' 'Executive branch lobbyist'" and insert "'Lobbyist'".

Page 16, line 30, delete ".".

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Page 16, line 30, reset in roman "and who is".

Page 16, reset in roman lines 31 through 32.

Page 17, line 32, delete "." and insert "**, including the code of ethics for state officers, employees, special state appointees, and persons who have a business relationship with an agency, including whether additional specific state officers, employees, or special state appointees should be required to file a financial disclosure statement under IC 4-2-6-8.**".

Page 18, line 22, delete "a" and insert "**an initial**".

Page 18, line 22, after "fee" insert "**and an annual report filing fee**".

Page 19, line 21, delete "the following:" and insert "**fifty dollars (\$50) until the department sets a different fee by rules adopted by the department under IC 4-22-2.**"

Page 19, delete lines 22 through 28.

Page 19, between lines 28 and 29, begin a new paragraph and insert:

"(c) The annual report filing fee for a lobbyist under IC 4-2-8 is fifty dollars (\$50) until the department sets a different fee by rules adopted by the department under IC 4-22-2."

Page 19, line 29, delete "(c)" and insert "(d)".

and when so amended that said bill do pass.

(Reference is to HB 1397 as introduced.)

BUCK, Chair

Committee Vote: yeas 9, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1397 be amended to read as follows:

Page 10, between lines 31 and 32, begin a new line block indented and insert:

"(6) Any agency employee, special state appointee, former agency employee, or former special state appointee with final purchasing authority."

Page 10, line 32, before "An" delete "(6)" and insert "(7)".

Page 19, line 2, delete "Assess" and insert "**For a finding made after June 30, 2007, assess**".

Page 19, line 10, delete "Assess" and insert "**For a finding made**".

HB 1397—LS 7006/DI 75+



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after June 30, 2007, assess".

(Reference is to HB 1397 as printed January 27, 2006.)

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